

The Honorable Tana Lin

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BUNGIE, INC.,

Plaintiff,

v.

ELITE BOSS TECH INCORPORATED,
11020781 CANADA INC., DANIEL
FAGERBERG LARSEN, ROBERT JAMES
DUTHIE NELSON, SEBASTIAAN JUAN
THEODOOR CRUDEN A/K/A
“LUZYPHER,” JOHN DOE NO. 4 A/K/A
“GOODMAN,” YUNXUAN DENG A/K/A
“YIMOSECAI,” ANTHONY ROBINSON
A/K/A “RULEZZGAME,” EDDIE TRAN
A/K/A “SENTIENT”, CHENZHIJIE CHEN
A/K/A “CHENZHIJIE402, DSOFT, CVR
37454303, MARTA MAGALHAES A/K/A
MINDBENDER A/K/A BLUEGIRL, AND
JOHN DOES NO. 9-20,

Defendants.

Case No. 2:21-cv-01112-TL

DECLARATION OF BRIAN W. ESLER
IN SUPPORT OF MOTION FOR
AWARD OF FEES

Brian W. Esler, declares:

1. I am one of the attorneys for Bungie, Inc., plaintiff in the above-captioned matter
and, unless otherwise indicated, I make the following statements based on personal knowledge
and belief.

2. In this matter, our law firm (Miller Nash LLP) acted as local counsel. I am a partner with Miller Nash LLP. I am an experienced commercial litigator, with a background in intellectual property advice and litigation, and am regularly recognized as one of the Top 100 Attorneys in Washington State by *SuperLawyers* magazine. I was admitted to the Washington bar in 1992 and have been a member in good standing ever since.

3. Attorneys, paralegals, and support staff record their time using computerized programs, and the total pre-bill for each month is then reviewed by the partner-in-charge (in this case, Bob Cumbow), who then makes appropriate adjustments to account for inefficiencies and other matters. The pre-bill is then turned into an invoice and sent to the client. Attached as **Exhibit 1** is a summary showing the total of the actual invoices sent to Bungie for work performed through the end of December 2022, as generated by our accounting department. The total amount shown there, and requested to be awarded as fees, is **\$18,458.60**.

4. Attached as **Exhibits 2 - 18** are copies of the actual invoices sent to Bungie for this matter, which show the individual performing the work, the date of the work, a description of the work, the time spent performing the work, and the hourly rate charged for that work. Certain descriptions of work may have been redacted as necessary for privilege. By submitting these entries (including those that are unredacted), we are not waiving the attorney-client, work-product or any other applicable privilege.

5. The relevant experience of the professionals who worked on this matter is summarized in their firm resumes. The resume for each timekeeper is attached as **Exhibits 19 - 21**, and the facts set forth there regarding each professional's experience are incorporated by reference.

6. The hours spent in connection with this litigation were necessary and reasonable given the complexity of the issues presented by the complaint. At the beginning of this engagement in 2021, my hourly rate was \$580 per hour; it increased to \$615 per hour in 2022, and to \$660 in 2023. My partner Bob Cumbow also billed a small amount of time on this matter,

DECLARATION OF BRIAN W. ESLER - 2
(Case No. 2:21-cv-01112-TL)

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1 and his hourly rate is \$492 per hour. Jason Proctor is the paralegal who also assisted in this
 2 matter, and his hourly rate is \$250 per hour. The hourly rates for services charged to Bungie for
 3 this complex litigation are reasonable and are appropriate for and comparable to the rates
 4 charged in the Seattle, Washington area for attorneys of comparable skill, experience, and
 5 reputation. The rates shown in Exhibits 2 - 18 are the actual rates charged to Bungie by Miller
 6 Nash.

7 7. Under Washington law, the rate that an attorney actually charges to a client for his
 8 or her services is presumed to be a reasonable rate. *Bowers v. Transamerica Title Ins. Co.*, 100
 9 Wn.2d 581, 597 (1983). Moreover, courts in this District have regularly found hourly rates in
 10 the range of \$600 or more per hour for an experienced litigator with 30+ years of experience to
 11 be reasonable hourly rates. *E.g.*, *Cherry v. Prudential Ins. Co. of Am.*, Case No. 21-27 MJF
 12 (W.D. Wash. Aug. 30, 2022) (finding \$600 per hour rate for attorney with 23 years of experience
 13 to be reasonable); *Berg v. Bethel School Dist.*, Case No. 18-cv-5345 BHS (W.D. Wash. May 19,
 14 2022) (approving rates of between \$350 - \$600 per hour); *Rinky Dink v. World Business Lenders*,
 15 LLC, Case No. 2:14-cv-0268-JCC (W.D. Wash. May 31, 2016) (approving partner rates of \$500
 16 - \$650 per hour, associate rates of \$250 - \$400 per hour, and paralegal rates of \$250 per hour);
 17 *Pelletz v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1326-27 (W.D. Wash. 2009) (approving
 18 local rates of between \$415 - \$760 per hour).

19 I declare under penalty of perjury under the laws of the United States that the foregoing is
 20 true and correct.

21 DATED this 20th day of January, 2023 at Seattle, Washington.

22
 23 s/ Brian W. Esler
 24 Brian W. Esler
 25
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DECLARATION OF BRIAN W. ESLER - 3
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